

HOUSE JUDICIARY COMMITTEE AMENDMENT NO. 1

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 149**

**House Bill No. 61**

By deleting sections 1, 2, and 3 in their entirety and by substituting instead the following:

Section 1. Tennessee Code Annotated, Section 45-10-102, is amended by inserting as a new item (5) the following and by renumbering the existing item (5) and other items accordingly:

(5) "Government authority" means an agency or department of the State of Tennessee, or any officer, employee, or agent thereof;.

Section 2. Tennessee Code Annotated, Section 45-10-102 (8), is amended by:

(1) deleting item (B), "The Federal Savings and Loan Insurance Corporation", in its entirety;

(2) deleting item (C), "The Federal Home Loan Bank Board" and by substituting instead "The Office of Thrift Supervision", and

(3) by relettering the items accordingly.

Section 3. Tennessee Code Annotated, Section 45-10-103, is amended by deleting the word "and" after the subsection (13) and inserting the word "and" after subsection (14), and adding the following subsection (15) at the end thereof:

(15) The furnishing by a financial institution of information or records to an affiliate of the financial institution. As used in this subsection, an affiliate of a financial institution is (i) a corporation, 80% of any class of voting stock of which is owned, directly or indirectly, by the financial institution or by a corporation that, directly or indirectly, also owns 80% of any class of voting stock of the financial institution, or (ii) a corporation that

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owns, directly or indirectly, 80% of any class of voting stock of the financial institution.

The affiliate to whom such records and information are furnished shall hold the records or information subject to this chapter as if it were the financial institution furnishing the records or information.

Section 4. Tennessee Code Annotated, Section 45-10-104, is hereby amended by designating the existing language as new subsection (a) and by adding the following as new subsection (b):

(b) Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any law, or regulation of this state to the contrary. Any financial institution, or officer, employee, or agent thereof making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of this state or political subdivision thereof, for disclosure or for any failure to notify the customer of such disclosure.

Section 5. Tennessee Code Annotated, Section 45-10-106 is amended by deleting the first sentence in item (2) in its entirety and replacing it with the following:

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"The customers in the case of a judicial subpoena issued in a proceeding in which the customer is not a named party, has not moved to quash the subpoena within ten (10) days after service of a copy of the subpoena on the customer; or in the case of a nonjudicial subpoena, the customer has not notified the issuer within ten (10) days after service of a copy of the subpoena on the customer that the customer objects to the subpoena, in which case the issuer must petition an appropriate court and obtain approval of such court before issuing such subpoena.

Section 6. Tennessee Code Annotated, Section 45-10-107, is amended by adding thereto the following subsection:

(c) A financial institution shall not be deemed to violate this chapter because it produces financial records in response to a subpoena containing the representation required under subsection (a)(1) hereof, even if the representation is false and a claim to that effect is made to the financial institution, unless such production violates a court order duly served on the financial institution.

(d) A financial institution refusing to comply with a subpoena that fails to meet all applicable requirements of subsection (a) hereof need not file a motion to quash the subpoena, but shall notify the issuer of the grounds of its refusal within a reasonable time after being served with the subpoena.

Section 7. Tennessee Code Annotated, Title 45, Chapter 10 is amended by adding as a new section 117 the following:

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45-10-117 (a) Upon application of a government authority, the customer notice required under Section 45-10-106 may be delayed by an order of the Chancery Court of Davidson County, or the court issuing a lawful subpoena, if the presiding chancellor or judge finds that:

- (1) The investigation being conducted is within the lawful jurisdiction of the government authority seeking the financial records;
- (2) There is reason to believe that the records being sought are relevant to a legitimate law enforcement, investigative or administrative inquiry;
- (3) There is reason to believe that such notice will result in:
  - (A) Endangering life or physical safety of any person;
  - (B) Flight from prosecution;
  - (C) Destruction of or tampering with evidence;
  - (D) Intimidation of potential witnesses;
  - (E) Jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding; or
  - (F) The public health, safety or welfare are threatened; and
- (4) The application for delay is made with reasonable specificity.

(b)(1) If the court makes the findings required in paragraphs (1), (2), (3), and (4) of subsection (a) of this section, it shall enter an ex parte order granting the requested delay for a period not to exceed ninety (90) days and an order prohibiting the financial

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institution from disclosing that records have been obtained or that a request for records has been made.

(2) One (1) extension of the delay notice provided in subpart (1) of this subsection of up to ninety (90) days may be granted by the court upon application, but only in accordance with this section.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the subpoena by the government authority together with the following legend specifying the nature of the law enforcement inquiry:

"Records or information concerning your transactions, which are held by the financial institution named in the attached process or request were supplied to or requested by the government authority named in the process or request on (date). Notification was withheld pursuant to a determination by (title of court so ordering) under the Financial Records Privacy Act that such notice might (state reason). The purpose of the investigation or official proceeding was \_\_\_\_\_".

(c) When access to financial records is obtained pursuant to Tennessee Code Annotated, Section 45-10-107 (b), under emergency access, the government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b) of this section, as soon as practical after such records are obtained serve upon the

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customer or mail by registered or certified mail to his last known address, a copy of the subpoena or other documents noting the judicial proceedings in which the customer is party.

(d) Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner. If the petition is prior to the expiration of the period of delay ordered by the court or an extension thereof, the court may order disclosure, unless the court makes the findings required in subsection (a) of this section. If the petition is after expiration of the period of delay or an extension thereof, the court shall order disclosure unless the court makes a finding that the record should be sealed in the interest of justice.

Section 8. This act shall take effect upon becoming a law, the public welfare requiring it.